

Chapter 5. Execution of Court Judgments and Arbitral Awards

The execution¹ process for decisions of courts and awards of arbitration tribunals, whether foreign or domestic, is similar in its general outlines. An execution order is issued and the process of enforcement of that order follows the general rules and patterns set forth in Section A of this Chapter. An execution order, however, can only be issued by a Russian court or arbitrazh court — thus, all arbitral awards and the decisions of foreign courts must be recognized by a Russian court and an execution order issued by the court on the basis of the foreign decision or the arbitral award. The circumstances under which a court may refuse such recognition are discussed in Sections B and C, as well as the special limitations period applied to foreign court judgments and international arbitral awards. Section D of this Chapter discusses some practical questions and concerns relating to the enforcement of judgments and the ability of those entrusted with execution to effectively carry out their duties.

A. Enforcement of Court Decisions

1. Governing Legislation

The enforcement of court decisions has at least two stages. A first, or preliminary, stage consists of the formalization of the decision itself and the expression of the amounts to be paid, property to be transferred or actions to be performed by the court in a form that can be used in execution of the judgment. The second or main stage consists of the proceedings by which enforcement measures are undertaken on the basis of the issued documents, including procedures for the mandatory or forcible execution of judgment in those cases in which the person or entity against whom/which the judgment is issued fails to observe it by voluntary action. The first stage of enforcement proceedings is governed by the rules in the Civil and Arbitrazh Procedure Codes concerning when execution documents are to be issued with respect to judgments and decrees.

The second stage of proceedings — the conduct of enforcement proceedings on the basis of the documents issued by the court — is governed by a combination of several pieces of legislation. Both the Civil Procedure Code (CPC) and the Arbitrazh Procedure Code (APC) contain provisions on execution proceedings. In addition, two new laws came into force at the end of 1997: the Law of the Russian Federation “On Execution Proceedings,”² “which regulates the enforcement process in detail, and the Law of the

¹ The terms “execution” and “enforcement” are both used in this Chapter to mean the process by which a sum of money or piece of property awarded to one party as a result of a court or arbitral decision is transferred to that party. The terms are essentially identical, although in English legal usage “enforcement” is more commonly used to indicate that outside parties are called upon to take action to force the terms of the decision to be met, while “execution” of a judgment may occur through voluntary action.

² Law of the Russian Federation “On Execution Proceedings,” *Sobranie Zakonodatel'stva RF*, 1997, No. 30, Item 3591.

Russian Federation “On Court Bailiffs,”³ which creates the service responsible for conducting those proceedings. The provisions of the currently effective CPC concerning enforcement proceedings are in many respects not consistent with the laws “On Execution Proceedings” and “On Court Bailiffs” and it is anticipated that the new Civil Procedure Code, when it is passed, will contain a limited section on execution that refers the details of the process to the specialized legislation.⁴ The APC, although adopted two years prior to the specialized legislation on execution, makes reference to the specialized legislation and contains only a few inconsistencies with the newer laws. Until the passage of the new CPC and APC, the later-passed Law “On Execution Proceedings” (hereinafter — the Law on Execution) governs concerning any matters on which there is conflict. Because the new law covers the matter in a relatively comprehensive form, discussion in the sections of this Chapter concerning the second stage of the enforcement process will focus on the provisions of the Law on Execution.

2. Issuance of Execution Documents on the Basis of a Court Decision

a) Requirement of an Execution Order

One of the most basic principles which must be understood concerning the enforcement of Russian court decisions is that a plaintiff who has been granted a sum of money, a performance, or the transfer of property, by a court decision in a case, or in whose favor certain procedural actions have been required by the court in a determination, must usually take additional positive action to ensure that the decision or determination is executed. The receipt by the respondent of the court’s decision or decree containing the judgment is not usually, in and of itself, sufficient. The document authorizing the plaintiff, who has now become a creditor of the respondent by virtue of the debt acknowledged in the court’s decision, to take the actions necessary for collection of the debt is an execution order.⁵

³ Law of the Russian Federation “On Court Bailiffs,” *Sobranie Zakonodatel’sтва RF*, 1997, No. 30, Item 3590.

⁴ The currently effective CPC was intended to govern the execution process directly, without reference to additional legislation, and therefore contains 94 articles on execution issues, plus additional provisions concerning the execution of foreign judgments. The provisions were designed to operate in very different economic circumstances from those currently existing, and are quite out of date in many respects. The 1995 APC was adopted in anticipation of the passage of specialized legislation on the topic, and for this reason contains only 13 articles on enforcement, making direct reference to the specialized legislation for the details of the proceedings.

⁵ The Russian term — *ispolnitel’nii list* — translates literally as an “execution sheet.” Until the passage of the current APC in 1995, arbitrazh courts issued “orders” [*prikaz*], and only the courts of general jurisdiction issued “execution sheets.” The new APC unified terminology for this type of court document, but references are sometimes still made in discussion or publications to “orders.”

REQUIRED CONTENT OF AN EXECUTION ORDER

(Orders Not Containing Required Information May Have To Be Reissued)

- ☐ the name of the court issuing the order
- ☐ the case in which the execution order is being issued and its number
- ☐ the date of issuance of the decision or other act of the court which is subject to execution
- ☐ the name of the creditor (plaintiff or holder of judgment) and of the debtor (respondent or other party found liable) and their addresses
- ☐ for an individual debtor, the date and place of birth of the individual and his place of work
- ☐ a statement of the resolution part of the judgment of the court (or the part relevant if several orders are issued)
- ☐ the date of entry of the court decision into force
- ☐ the date of issuance of the execution order and the period within which it is effective

b) Required Content of an Execution Order

Failure of the court to state any of these required elements in the execution order may result in the need to have the order reissued before it can be enforced through the services of the court enforcer. The court has the right to grant a delay in the execution of the judgment or to allow for the payment of the judgment in installments, on the basis of a petition filed by the creditor, the debtor or by a court enforcer. The court issues a determination on such petitions through the usual procedures. If this is done prior to the issuance of an execution order concerning the judgment, the delay or payment in installments must be reflected in the terms of the execution order.

c) Issuance of an Execution Order

An execution order is issued by the court that issued the decision, decree or determination in which the action or payment is required. The execution order is issued to the person/entity entitled to seek the performance or sum after the corresponding decision or other court act enters into legal force. *Exceptions to this rule are decisions which void an act of a state body (and may require elimination of its consequences), determinations confirming a settlement agreement, and also determinations concerning security for a suit or security for execution, all of which are subject to immediate execution, although they enter into force in accordance with the general*

rules.⁶ Separate execution orders are issued with respect to several plaintiffs or respondents, or where the execution must be carried out in several locations, with each of the separate orders containing only the relevant part of the judgment.

3. Limitation of the Period of Effect of an Execution Order

Execution orders are subject to a limitations period during which they must be presented to the proper person or institution for execution. The limitations period on an execution order varies depending upon the body that issued it and in some cases on the type of execution document concerned. *For all acts of the arbitrazh courts, and for execution orders based on the decisions of domestic Russian arbitration tribunals, the limitations period on presentation of an execution order is six months. For execution documents issued by the courts of general jurisdiction, including those issued on the basis of foreign court judgment or an arbitral award issued by a foreign arbitral tribunal, the limitation period is three years.* This difference in limitations has sometimes caused confusion among those unfamiliar with the system and its rules, and it is important for those seeking to enforce a court decision or arbitral award to be certain which period applies to their case. (See Section B and C, below, for further discussion of this issue.) In addition to these general periods, other limitations periods are established by legislation for other types of documents which may be subject to execution through mandatory procedures.⁷

The limitations period on the presentation of the execution order is effectively a limitation on the right to execution of the judgment. If the execution order is not presented for execution within the required period, the holder of the order loses the right to execute the judgment through mandatory execution procedures.⁸ For execution orders related to court decisions, however, the period for presentation of the execution order is a standard procedural period, and may be renewed by the court upon a petition showing acceptable reasons for failure to present the order. The period applies to presentation of the order for execution, not to the fulfillment of the demands of the execution order by the debtor. The period ceases to run upon the presentation of the order for execution, or upon

⁶ Decisions of courts of the first instance enter into force one month after their issuance unless appealed, and if appealed and not reversed enter into force immediately upon the decision of the appeals court. Determinations enter into force a month after their issuance, unless it is specified otherwise in the portions of the procedural code related to the particular type of determination. Decisions of appellate and cassational courts, as well as decisions issued by the Plenum of the Higher Arbitrazh Court in supervisory proceedings, all enter into force immediately and an execution order may be issued at the time of issuance of these decisions.

⁷ For example, a period of three months is established for execution documents related to certain labor disputes and to decisions concerning administrative violations of law (minor infractions of the law, giving rise to fines and similar penalties). The effect of the Code of Administrative Violations, previously limited to individuals, may soon extend to legal entities as well and an expected new Code may contain provisions relating to violations by those entities in the sphere of economic activity. If this occurs, those conducting business activities will need to take note of the short periods traditionally provided in that Code both for the appeal of administrative actions of state bodies and for the execution of decisions imposing administrative sanctions.

⁸ The debtor/respondent can, of course, voluntarily honor the obligation after this period has expired.

a partial payment. If the execution order is thereafter returned to the creditor because it cannot be executed (e.g. by a bank in which the debtor no longer has funds), a new limitations period begins to run for the presentation of the execution order through other means (e.g. the opening of execution proceedings against property by the court enforcers division of the bailiff service). The limitations period may also apply to petitions for the issuance of a duplicate of an execution order.⁹

4. Presentation of the Order to a Bank for Execution

If the execution order concerns the payment of a sum of money, the order may be presented by the person seeking payment directly to a bank or credit institution in which the debtor has accounts for payment. The bank is obligated within a three day period of receipt of the execution order to pay the sum stated in the order to the creditor, if there are sufficient funds in the debtor's account. No agreement or order by the debtor to the bank for payment is required. If the account does not contain funds to satisfy the debt, or if the debt can only be satisfied in part, the bank must return the execution order to the creditor (within the same three-day period), with a statement that the order cannot be executed or cannot be executed in full. Failure by a bank to execute an order properly presented (i.e. to pay out existing funds in the account or to respond to the creditor) may result in a fine of 50% of the sum involved in the order, and a repeated failure by a bank to honor execution orders is grounds for withdrawal of the bank's license to conduct banking operations.¹⁰

If the creditor does not have information on the bank accounts of the debtor or is unsure what funds may be available, the creditor may choose not to present the execution order directly to a bank, but rather to present the execution order to the "court enforcer" — the part of the court bailiffs service responsible for carrying out execution proceedings — for the conduct of formal enforcement proceedings. In this case, the court enforcer may present the execution order at banks in which the debtor has accounts, and the rules concerning bank payment of the sum will be the same as those described for presentation by the creditor directly. A creditor that has received notice that the bank(s) in which the debtor has accounts that the creditor is aware of cannot execute the order, may present the same order to the court executor for the conduct of the execution proceedings described below in order to satisfy that part of the order not paid by the bank(s). If the execution order concerns other matters instead of or in addition to the payment of money, the order must be presented to the court enforcer. This presentation of the order to the court enforcer begins the formal process of execution.

⁹ See Article 204 of the APC, providing that a petition concerning the issuance of a duplicate execution order may be satisfied by the court upon a showing that the original has been lost or not returned, but only within the six month period for presentation of the original order.

¹⁰ While the APC provides that the fine is up to 50%, suggesting that the court has some discretion in the setting of the fine in specific cases, Article 86 of the Law on Execution (which governs) omits the words "up to" from its equivalent provision, apparently indicating that the amount of the fine is no longer discretionary and is set at 50% of the amount in question.

5. The Court Enforcer

The Law of the Russian Federation “On Court Bailiffs” created for the first time a Court Bailiffs Service, which has two core functions — the maintenance of order in the courts and the execution of judgments. The law suggests a division of the two functions of the service, and refers to those whose task it is to ensure the execution of judgments as court bailiff-enforcers (hereinafter “court enforcers”). The court bailiffs service is an executive body, attached to the Ministry of Justice of the Russian Federation, and the Chief Court Bailiff of the Russian Federation, who is the head of the Service and who directs the department of court bailiffs in the Ministry, is *ex officio* a Deputy Minister of Justice of the Russian Federation. According to the Law, a separate court bailiffs service is to exist in the military courts department of the Ministry of Justice of the Russian Federation, and in each of the subjects of the Russian Federation a court bailiffs service is to be headed by the chief court bailiff for that subject, who is *ex officio* a deputy chief of the state body for justice of that subject of the Federation. The bailiffs at the local level, and the senior court bailiffs directing each local subdivision, are appointed to their posts by the chief court bailiff of the relevant subject of the Federation.¹¹

Court enforcers have the right to use physical force and to use weapons in the pursuit of their duties, if other means have not been sufficient. They must, however, warn the possible object of the use of force and must provide adequate time for the relevant party to take necessary actions voluntarily, unless exigent circumstances exist.¹² This is a substantial change, since prior to the passage of the current legislation, court enforcers did not have these powers and the execution of a judgment against an unwilling respondent was difficult and complicated.

The bailiffs service as a whole, including the court enforcers, is to be financed out of the federal budget, although regional authorities may choose to contribute to the support of the service in their regions. The court enforcer service, however, also receives some of its funding from the execution fees which are imposed upon a judgment debtor who fails to voluntarily execute the judgment. Seventy-percent of such fees are placed into the “fund for the development of execution proceedings.” This fund is a non-budgetary fund from which expenses for execution proceedings are paid during the course of execution and from which individual court enforcers receive incentive payments.

In addition to salaries and benefits, individual enforcers receive additional payments when they provide for the timely execution of a judgment. The payment is in the amount

¹¹ Chief court bailiffs for the subjects of the Federation are appointed by the Chief Court Bailiff of the Russian Federation, on the basis of nominations from the minister of justice or other head of the relevant executive body for matters of justice in the corresponding subject of the Federation. (Not all of the subjects of the Federation choose to mirror the titles of federal officials in their own executive bodies. Thus, some subjects (in particular the republics) refer to some of their executive bodies as ministries, and to the heads of those bodies as ministers, while others used other terms, such as department or administration, and refer to the heads of those bodies with corresponding terms.) The Chief Court Bailiff for the Russian Federation is appointed by the Government of the Russian Federation upon nomination by the Minister of Justice of the Russian Federation.

¹² Articles 15-18 of the Law on Court Bailiffs.

of five percent of the sum or value of property recovered, up to a maximum of ten times the minimum monthly wage, for each judgment executed. Judgments not involving the recovery of property entail a payment of five times the minimum monthly wage. If only part of an order has been executed, the court enforcer receives a payment proportional to the amount of the judgment that was recovered.

6. Presentation of an Execution Order to the Court Enforcer and its Acceptance

Execution proceedings conducted through the court enforcer proceed according to a number of formal stages. The first of these stages is the presentation and acceptance of the execution order by the court enforcer. The person seeking execution presents the execution order to the court enforcer, who is required to accept the execution order and open execution proceedings if the order is presented within the limitations period and it is properly formulated. The court enforcer must, within a three day period of receipt of the order, either issue a decree on the initiation of execution proceedings or return the execution order. (A sample of a decree initiating execution proceedings appears as Appendix Q to the Handbook.) If the reason for the return of the order is the expiration of the period of limitations, the order is returned to the creditor who submitted it. If the reason for return is the absence of required information, the order is returned directly to the court that issued it. If the order is returned, the court enforcer must within a day of returning it notify the issuing court and the submitter of the order. If the reason for the return of the order was failure to meet documentary requirements, the court enforcer's decree on its return must state specifically which requirements were not met. If the flaws in the document are corrected, the order (or a new order issued by the court) may be submitted again.¹³

If the court enforcer accepts the execution order, a decree is issued on the initiation of proceedings in which a period is established by the court enforcer for the voluntary execution of the order by the debtor, which period may not be more than five days from the day of initiation of the execution proceedings. The court enforcer must also include in the decree provisions informing the debtor of the requirement that an "execution fee" and the costs of the execution proceedings be paid in the case of failure to voluntarily execute the requirements of the order. Upon a petition by the creditor, the court enforcer may, at the same time as the issuance of the decree on initiation of the proceedings, conduct a listing and description of the debtors property and "arrest" it — that is, take measures to prevent its sale, transfer or disappearance. Copies of the decree concerning the initiation of the case must be sent within a day of its issuance to the creditor, debtor and to the court that issued the execution order. A decree on the initiation of execution proceedings, and also a decree returning the execution order, may be appealed within a 10-day period.

¹³ The court enforcer, in returning the order on the grounds of a flaw in the document will establish a period for the correction of the problem. If the flaw is corrected within that period, the order will be considered to have been submitted at the time of the first submission. If the flaw is not corrected within that period, the order may still be resubmitted after its correction, but will be considered to have been submitted at the time of the second submission, and the limitations period applied accordingly.

7. Security for Execution of the Judgment

Imposition of measures of security for the execution of a judgment may be done by the court issuing the original decision and execution order. Arbitrazh courts will accept petitions from participants in the case for measures of security for execution both before and after a decision has been issued, although they may not impose such measures on their own initiative. The rules for the consideration of such petitions and the types of measures that may be imposed for securing the judgment are the same as those which apply to petitions for security measures during the consideration of the suit.¹⁴ According to those general rules, the arbitrazh court must consider the petition for security within a day of its receipt, and issue a determination imposing or denying the security measures. The determination may be appealed in the usual procedure, but is subject to immediate execution. Execution of the determination takes place on the basis of an execution order issued by the court at the same time as its determination. The execution order is to be executed through the same procedure as that for a final decision. This means, in effect, that such an order is to be taken to the court enforcer, who will impose the stipulated measure of security on the debtor's accounts and property, since the execution of final decisions is carried out in that manner.¹⁵ The application of the standard procedures for execution of judgments — which involve various delays — to requests for the imposition of security measures concerning the same judgment is circular and may defeat the primary purpose of such measures, which is an immediate prevention of improper actions until the normal execution process can take place.¹⁶

A second possibility for securing execution is raised by the provisions of the Law on Execution related to initiation of the execution proceedings. According to those provisions, the court executor may inventory and impose distraint on the property of the debtor at the time of issuance of the decree initiating the execution proceedings. This may be done only on the petition of the judgment creditor, for the purpose of securing a property judgment, and the measures must be listed in the decree. There is no requirement that the measures be ordered or approved by a court. Thus, the court

¹⁴ See Chapter 3 of the Handbook concerning the available measures of security.

¹⁵ Current law does not clearly state whether a execution order for security of judgment (or of suit) which is directed solely toward a bank in which the debtor (respondent) holds assets (e.g. a freezing of the account) can be submitted directly to the bank by the judgment creditor in the same fashion that an execution order concerning the payment of funds from such accounts. This is more likely to be an issue in relation to security during the consideration of a claim, since at the stage of execution available funds may simply be withdrawn to meet the relevant judgment.

¹⁶ The provisions concerning initiation of execution proceedings do not specifically provide for the case of an immediately enforceable determination. Thus, the general statement in the APC that orders concerning security for a judgment are to be executed in the usual procedure would seem to subject them to all of the requirements of the initiation process under Article 9 of the Law on Enforcement, including the three-day period for the issuance of the court enforcer's decree and the mandatory stipulation of a period for voluntary compliance. The use of the court enforcer's authority to immediately impose distraint on property under part 5 of Article 9, discussed below, might allow some delay to be avoided, although this would not clearly eliminate the possible three-day delay in the issuance of the decree. If the arbitrazh court can be called upon to respond to a petition on security within one day of its submission, there seems little reason that the court executor should not be subjected to a similar time frame within which to act on the court's determination.

executor may independently impose these measures of security for property judgments. His decree concerning the initiation of execution proceedings, including any provisions on immediate distraint of property, can be appealed within a 10-day period of its issuance to the corresponding court.

8. Conduct of a Search for the Debtor or Debtor's Assets

As a general rule, the court enforcer is not obligated to undertake a search for a debtor or for the debtor's assets in commercial dispute cases.¹⁷ The court enforcer may, however, conduct a search in cases concerning commercial disputes if the creditor agrees to cover the costs of the search and makes a corresponding deposit in advance through the standard procedure.¹⁸ The court enforcer is not obligated to conduct such a search, even if the required cost coverage is promised. If the debtor or debtor's assets are found, the creditor may seek coverage of the costs of the search from the debtor. The court enforcer may not directly impose the search costs on the debtor in these cases, however, and the creditor must seek an award in court. In conducting a search for the debtor assets, both the court enforcer and the creditor's may, after execution is formally initiated, make use of the records of the tax service concerning the debtor's accounts.

9. Participants in the Execution Process; Recusals

a) The Parties and Their Rights

Like the legislation governing procedure in the arbitrazh courts, the Law on Execution contains general provisions defining the participants in the execution process and their rights and obligations. The creditor(s) and debtor(s) on the judgment are defined as the "parties" and have the right:

- to acquaint themselves with all of the materials of the case and to take excerpts and make copies of those materials;
- to participate in the actions taken in execution of the judgment;
- to make petitions, and to submit explanations, conclusions and arguments on all questions which arise, as well as objections to the petitions and arguments of other parties; and
- to petition for the recusal of those participants subject to recusal and to appeal the actions of the court enforcer.

If there are multiple creditors or debtors, participation in the execution proceedings on behalf of all or several of the creditors or debtors may be entrusted to one of the co-

¹⁷ The only circumstances in which a search is obligatory concern execution of judgments concerning alimony, tort damages for death or harm to health or for the death of the supporter of the creditor, and those concerning removal of a child from custody of the respondent.

¹⁸ See Section A.16. of this Chapter on execution fees and costs.

parties. A legal successor may be brought into the case upon the death or other removal of a party, and all of the actions taken by the party being replaced prior to its removal will be binding upon the successor.

Parties may have representatives participate in the execution process in their interests.¹⁹ Organizations may be represented by their heads or officials, with their capacities as defined by law or by the founding documents of the organization, or by a representative given authority in the usual manner. Officials of organizations must present documents evidencing their positions and authorities, and representatives must have properly formalized proof of their authority to represent the relevant party. The representative's power to submit or withdraw the execution document, to appeal actions of the court executor, to entrust the representation to another person, or to receive money or other property on behalf of the represented party must be specifically stated in the document which gives authority to the representative. In other respects, a duly authorized representative may take all actions that could be taken by the parties.²⁰

b) Interpreters/Translators, Witnesses and Specialists

A party in need of a translator to understand and participate in the execution proceedings may invite a translator to take part in the proceedings, and will be given time to do so. If a translator is not found by the party within the period allowed by the court enforcer, a translator may be appointed by the court enforcer. Payment to a translator is included among the execution costs which are covered by the parties through the general procedure (see below).

Witnesses [ponyatje] are required to be present during some acts related to the execution proceedings, including those that involve the opening and search of premises and storage facilities used or occupied by the debtor or other persons, and the inspection, "arrest", confiscation or transfer of property belonging to the debtor. The court enforcer may call witnesses to other actions at his discretion. Witnesses must be at least 18 years of age, may not have an interest in the execution actions being taken, and may not be related to other participants in the proceedings or in a subordinate position to them. Where witnesses are used, there must be at least two witnesses.

Witnesses are obligated to confirm by their signatures the fact of occurrence, the content and the results of actions taken in their presence. The signature is placed on the document reflecting the actions. Witnesses have the right to know what actions they are to witness and on the basis of what documents they are being taken, and to make notations concerning those actions in the document personally or to have them included. The court enforcer must explain the rights and duties to the witnesses prior to the taking of any actions. Witnesses have the right to be compensated if they bear expenses in connection with their service, which compensation is included in the execution costs.

¹⁹ Persons under 18, under guardianship or supervision, and judges, procurators, court staff, and staff of the bailiff service may not be representatives. An exception is made for judges, procurators and staff members who are representing the corresponding court, procuracy office, or bailiff service division directly.

Specialists may be called to participate in the execution proceedings at the initiative of the court enforcer or by request of the parties. Such specialists give conclusions in written form, and are obligated to appear when called and to give an objective conclusion on the relevant issues. They have the right to be paid for their work, and the expenses for their payment are included in the execution costs.

c) Recusal of Enforcer and Other Participants

The court enforcer, and also interpreters and experts, are subject to recusal if:

- they are related to the parties, their representatives, or other persons participating in the process;
- they have an interest in the outcome of the execution proceedings; or
- there are other grounds to doubt their objectivity.

If such circumstances exist, the person affected by them is obligated to self-recuse, but a petition may also be made by the parties on these grounds. Petitions for the recusal of a court enforcer are decided by the senior court enforcer to whom he is subordinate, while petitions on recusal of an interpreter or expert are decided by the court enforcer.²¹

10. Delay, Suspension or Termination of Execution Proceedings

a) Delay of Execution Proceedings

Upon a petition by the creditor or a determination by the court, the court enforcer may delay execution proceedings for the period requested or indicated in the determination. In circumstances in which there is an obstacle to the performance of execution proceedings, the court enforcer may delay them for a period of not more than 10 days, either on his own initiative or on the basis of a petition from the debtor. A decree must be issued on the delay and the parties and court notified.

b) Suspension of Execution Proceedings

Under a number of circumstances, execution proceedings must be suspended or terminated, or may be suspended. In these instances, the decision to suspend or to terminate the execution proceedings is made by a court on the basis of a petition of either the court-enforcer or a participant in the case. With respect to execution orders issued by the arbitrazh court, the suspension or termination may be considered by the court which

²¹ The law does not contain a provision concerning the recusal of witnesses, but rather states that persons with the same impediments that lead to the recusal of the enforcer, expert or interpreter may not be appointed as witnesses in the first place. However, since the parties have a general right to make petitions and express their concerns, conclusions and arguments on all matters arising during the execution proceedings, they could presumably use these methods to demand that a biased witness not be used, if they were present at the time the actions were occurring.

originally issued the execution order, or by the arbitrazh court in the place of location of the court enforcer. For all other types of execution orders and documents, including decisions of the courts of general jurisdiction, the suspension or termination is considered by a court of general jurisdiction in the place of location of the court enforcer.²²

Proceedings for execution **must** be suspended upon:

- 🕒 death of the debtor, announcement by a court that the debtor is legally dead or is recognized as missing, if there is a possibility for successorship;
- 🕒 initiation of bankruptcy proceedings concerning the debtor in the arbitrazh court;
- 🕒 loss by the debtor of legal capacity to act in his own behalf;
- 🕒 participation of the debtor in hostilities as a member in active service in the armed forces or a request of a creditor in the same circumstances;
- 🕒 appeal of the execution order in court, where permitted by law;
- 🕒 appeal of actions of the official or body considering a case on an administrative violation;
- 🕒 issuance by a person authorized by law to suspend the execution of a court act of a decree doing so;
- 🕒 filing of a suit concerning the exclusion from the listing of the debtor's property (or release from "arrest") of particular property which is being subjected to execution in accordance with the execution order.

Execution proceedings may also be suspended, although this is not obligatory, in several other circumstances. Suspension is discretionary when:

- 🕒 the court enforcer has made recourse to a court for an explanation of the execution order;
- 🕒 a request was made by a debtor during his mandatory military service;
- 🕒 the debtor is on a long-term work-related trip;
- 🕒 the debtor is being treated in a medical facility;
- 🕒 an appeal has been filed concerning the actions of the court enforcer or concerning a refusal to recuse himself;
- 🕒 a search is being conducted for the debtor or his property;
- 🕒 the debtor or creditor are on vacation beyond the area in which the execution actions are to be carried out.

²² Article 24 of the Law on Enforcement states the rules for consideration of suspension or termination of execution proceedings.

In instances of such suspensions, the execution is to be suspended until the conditions leading to the suspension have ceased to exist, and may be reinitiated by a court on the basis of a petition by the creditor or the initiative of the court enforcer.²³

c) Termination of Execution Proceedings

Execution proceedings *must* be terminated when:

- Ø the court has accepted a creditor's rejection of the right to exact the relevant money, property or performance;
- Ø a settlement agreement has been confirmed by the court between the creditor and the debtor;
- Ø the creditor or the debtor has died or been declared dead or missing, if the relevant claim or obligation does not pass to a successor or cannot be enforced against the administrator of the property of a missing person;
- Ø there is insufficient property from a liquidated organization to satisfy the claims;
- Ø the legally established period for a particular type of execution has expired;
- Ø the court decision or other document on which the execution order was based is reversed;
- Ø the creditor has refused to accept objects confiscated from the debtor according to an execution order providing for the confiscation of those specific objects and their transfer to the creditor.

Upon the termination of execution proceedings, the court executor must reverse all of the actions that may have been taken in the execution of the order. The execution order, upon which a notation is made concerning the termination, is returned to the issuing body.

11. Forcible Execution Against Assets of the Debtor

a) Measures Authorized

If a judgment debtor has not satisfied the requirements contained in an execution order by the end of the period established by the court enforcer for voluntary compliance,

²³ Article 22 of the Law on Enforcement defines the periods for suspension in various instances by stating the circumstance (e.g. release from military service or from a medical treatment facility) that will allow reinitiation of enforcement proceedings. In effect, the named events define the point at which the obstacle ceases to exist. The court may establish shorter periods for suspension if it sees fit.

the court enforcer may undertake measures for the forcible execution of the order. The measures authorized by law include:

- confiscation and (if necessary) sale of the debtors funds or property;
- attachment of salary or other income of a debtor;
- confiscation and (if necessary) sale of assets or property of the debtor held in the possession of others;
- transfer of specific property to a judgment creditor in accordance with an execution order;
- other measures in accordance with law which ensure the execution of the order.²⁴

b) Priority of Asset Attachment

In conducting a forcible execution, the first assets against which the execution is made are the debtor's monetary assets, including funds located in banks and other credit institutions and cash resources. Where the debtor is an organization or firm, the first priority for asset attachment also includes the attachment of debts which are owed to the debtor by third parties and which are due and payable.²⁵ Safes and other storage facilities will be opened and their contents inventoried and confiscated, while bank and other accounts may be frozen upon the order of the court enforcer. If payable debts are to be arrested, the debtor on the judgment being executed is forbidden to take any actions changing or extinguishing its rights of demand in the debt and the third party obligated to the debtor is informed that it may not pay the debt except by the transfer of the corresponding amount into the deposit account of the person (court enforcer) conducting the execution. Rights of claim on debts owed to the judgment debtor may also be sold to other parties during the process of execution and the amounts received used to meet the judgment being executed.

Funds in rubles are to be used to meet the judgment first, and only thereafter funds in foreign currency, if funds in rubles are not sufficient. If the court enforcer does not have information on the location of the debtor's accounts, he may obtain it from the tax service, which is obligated to provide the information within a three-day period of an inquiry by the court enforcer.²⁶

²⁴ These may include measures authorized by the Law on Enforcement concerning execution of judgments which require the judgment debtor to take particular actions, or judgments concerning such matters as restoration of an illegally fired employee to a previous work position or concerning the eviction of the respondent in the suit from premises.

²⁵ This rule was established by Decree No. 516 of the Government of the Russian Federation of May 27, 1998 "On Additional Measures for the Improvement of the Procedures for Execution Against the Property of Organizations."

²⁶ A judgment creditor has the same right to receive information from the tax service, after the presentation of a proper execution order that has not yet expired.

If the debtor's monetary assets are not sufficient, the court enforcer begins to execute the judgment against the debtor's other property.²⁷ For debtor organizations, a three-tier priority order is established for execution against property:

first priority — property not involved in productive activities (in addition to money and rights of claim on debts, this includes such items as cars, office furnishings, stocks, etc.);

second priority — completed products, and other valuables not directly involved in production;

third priority — immovable property, raw materials, equipment and other basic assets which are directly involved in productive activity.

A debtor has the right to indicate which property should be executed against first, although the final determination regarding the order and process for execution against the property is made by the court enforcer. In instances in which a court enforcer puts assets of an organization debtor in the third priority category under distraint, notification must be made to the Federal Bankruptcy Administration within three days. The Federal Bankruptcy Administration may require that a notice be published in the press concerning the execution against the organization's property. If the Federal Bankruptcy Administration notifies the court enforcer that it will seek initiation of bankruptcy proceedings against the debtor organization, the court enforcer must petition the relevant court (which issued the execution order) for a delay in the execution proceedings. If a bankruptcy case is initiated by the arbitrazh court, the execution proceedings are suspended until the consideration of the case by the court.

c) Listing, Storage of Debtor's Property

The court enforcer, not later than within a month of the delivery to the debtor of the decree on initiation of execution proceedings, must carry out a listing of the debtor's property and announce prohibition on its sale, and may also remove property from the debtor's possession for storage and later sale. The choice of whether to remove specific items of property immediately from the debtor's possession is made by the court executor, taking into account the purpose and use of the property and other factors in each specific case, and in the case of organization debtors taking account also of the priority order discussed above. Money, precious metals and jewels found in the possession of the debtor must be removed and placed either into the specialized accounts of the court enforcer for later use in satisfying the judgment or into a special storage facility.²⁸

²⁷ With respect to individuals, some property is not subject to execution proceedings. This generally includes the basic necessities of life, and is not usually an important source of assets for execution in a commercial matter. The list of such property currently in force is contained in an appendix to the Civil Procedure Code.

²⁸ The Statute on the Procedure and Conditions for the Storage of Distrained and Confiscated Property, confirmed by Decree of the Government of the Russian Federation, No. 723, of July 7, 1998, provides some additional detail on the requirements for the treatment of various types of property.

Perishable goods are to be transferred for immediate sale. Expenses for the storage of property by someone other than the debtor or its employees will be compensated, and the amount included in the costs of execution.

It should be noted that the Law on Execution treats the conditions of storage and the rights and obligations of the person/organization performing storage functions in a unified fashion, making few distinctions between instances in which distrained property remains in the possession of the debtor (and is thus “stored” by the debtor) and those in which the property is confiscated and stored by someone else. There is a general provision allowing the person storing the property to use the property while it is being stored. This provision appears to extend not only to the debtor but also to outside storage facilities, although it is not clear why a paid storage facility would need to have use rights in stored property. Similarly, the general requirement that the expenses of maintenance of the property be compensated, with set off of benefit from its use, appears to apply not only to outside storage facilities, but also to the debtor, leaving it unclear whether the debtor is to receive compensation for maintenance of its own property and whether the compensation received remains among the assets available to the creditor.²⁹

Distrained or confiscated property of the debtor is to be sold within a period of two months from the time of imposition of distraint or confiscation. The law requires that the sale of the property be conducted by a specialized organization on the basis of a contract, with the exception of immovable property, which is to be sold at auction by a special organization which is licensed to deal in immovables.³⁰ If the property is not sold within the legally imposed two month period, the objects themselves are to be offered to the creditor. If the creditor refuses the objects, they are returned to the debtor.

12. Execution Against Income Streams

The provisions of the Law on Execution do not envision any form of execution against regular income which would apply to commercial matters. While the provisions

²⁹ These general rules would seem to permit the odd situation in which an outside storage facility uses the debtor’s property, thus incurring maintenance expenses which are also charged to the debtor or included in the execution expenses, and also being paid a fee for storage services. It is not clear why a storage facility or person entrusted with confiscated property awaiting sale should have such rights if the property can be safely and properly stored without use. If the use of the property causes any additional costs to be included in the execution expenses in situations where the debtor’s property is insufficient to meet the judgment, the use of the property by the storage facility is effectively being conducted at the expense of the creditor. If this type of situation arises with any regularity, there may be a need for a later amendment to the law to distinguish more clearly between the rights of a debtor who is continuing to use distrained property and of a person or organization not the debtor which is performing storage functions for a fee.

³⁰ In practice, this may mean that a commercial company organized for the purpose would be authorized to conduct sales and storage of seized property in a particular area. Conflicts of interest may arise in relation to these processes. One form of conflicting interest might be an interest on the part of the sales and storage companies and/or their individual employees in purchasing or using the property at a low cost to themselves. Effective means will need to be developed to ensure that the goal of the process is the receipt of the maximum value for the property involved and to prevent any abuses that may occur. It may also be necessary to ensure that the process of distraint and sale of assets of a judgment debtor is not used as a means to eliminate competition.

of the relevant chapter of the Law on Execution³¹ refer generally to “the debtor,” without restricting this to physical persons, and to “income,” not restricting this to salaries and other personal income of an individual, execution against income may be used only with respect to periodic payments (such as alimony) and to sums not exceeding twice the minimum monthly wage. In all other circumstances, the execution is to be made immediately upon monetary assets and property as described above. In some cases, execution against debts due to the judgment debtor may, in practice, include much of the regular income of the business. However, the provisions concerning the use of debts and rights of claim to meet a judgment appear to relate only to debts currently due rather than to envision ongoing process. There may be some cases in which it will be more efficient and less damaging to the debtor’s business to pay a large judgment in several installments out of its business income, rather than to sell rights to a debt at a significant discount or to sell physical property needed for the conduct of the business. This type of arrangement would require that the debtor and creditor agree to this procedure specifically,³² or that the debtor petition the court issuing the execution order for an order granting payment in installments.³³

13. Priority Order for Payments

Fees and expenses associated with the process of execution are paid out of the sum of the debtor’s assets (including sale proceeds) before all other claims against the funds. The remaining sum is used to satisfy the judgment, and if additional funds are left, they are returned to the debtor. If the sums available to the court enforcer are not sufficient to cover the claims of all of all judgment creditors, the claims are to be satisfied in the following priority order:

first priority for payment — alimony and tort damages for harm to life or health, or for the death of a family supporter;

second priority for payment — claims of employees arising from labor relations, of members of cooperatives connected with their work in the cooperative, of a lawyer for the provision of legal services, and of authors and inventors for use of their works;

third priority for payment — claims of the Pension Fund of the Russian Federation, of the Social Insurance Fund of the Russian Federation, and of the State Employment Fund of the Russian Federation;

³¹ Execution against salaries and other income of a debtor is covered by Chapter 6 of the Law on Execution, which is clearly written with an individual, rather than a company or organization, in view. There are no provisions for execution against the income of an organization in Chapter 5 of the Law on Execution, which covers particular features of execution against an organization debtor.

³² The debtor and creditor would need to conclude a settlement agreement to this effect, to be confirmed by the court.

³³ The court may consider such a petition either before or after the issuance of the original execution order. The restrictions discussed in the text do not apply to plans for the restructuring of a business enterprise and/or the repayment of its debts which are confirmed through the legal procedures applicable to bankruptcies, which are governed by specialized legislation.





fourth priority for payment — payments owned to the budgets of any level of the state (e.g. taxes) and also payments to non-budgetary funds not listed in the third priority;

fifth priority for payment — all other claims in the order of receipt of the execution documents related to those claims.

If there are not enough funds to cover all of the claims in a given priority category, the claims in that category are covered proportionally to the size of the claim.

14. Return of an Execution Order Without Completed Execution

In a number of circumstances, the court enforcer may return the execution order to the creditor without a suspension or termination and without its complete execution. As noted above, this may occur when the order is presented for execution after expiration of the time limit or the execution order does not meet documentary requirements. In addition, the order may be returned to the creditor without a completed execution when:

-  the debtor has no property or income which may be used to satisfy the judgment and the court enforcer has not been able to locate any such assets;
-  if the creditor refuses to accept unsold property remaining after all of the execution actions have been taken as payment for unmet portions of the debt;
-  if the creditor, by action or inaction, hinders the execution; or
-  if the debtor cannot be located, nor its property or other assets, in instances where the law does not provide for a search.

When the execution order is returned to the person submitting it without completion of the execution, the submitter may receive back all or a part of the advance deposit for costs which is required under the Law on Execution to be submitted with the execution order, except where the reason for the return is the creditor's hindrance of the execution proceedings.³⁴

³⁴ Where the execution order is returned on the grounds that the limitations period has expired or the document is not properly formulated, and where the creditor refuses property which was not sold, the deposit is returned in full. Where the reason for the return is that the debtor cannot be found or has no assets with which to satisfy a judgment, the deposit is returned in that part which is not needed to cover expenses of the execution actions taken. The reason for different rules with regard to cases in which the executor attempted to sell property but was unable, and those in which the executor could not locate the debtor and/or its assets is not clear. See Section A.16 in this Chapter concerning execution costs and fees.

15. Conclusion of Execution Proceedings

Execution proceedings are concluded by any of the following:

- ✓ complete execution of the execution order;
- ✓ return of the execution order without execution upon the demand of the court that issued it or of the creditor;
- ✓ return of the execution order on the grounds listed in Section A. 13 of this Chapter;
- ✓ sending of the execution order to another division of the court enforcer's service for execution;
- ✓ sending of the execution order to an organization or place of work for the one-time or regular deduction of payments from the salary or income of the debtor;
- ✓ termination of the execution process on the grounds listed in Section A.9(c), of this Chapter.

The court enforcer issues a decree on the conclusion of execution proceedings, which may be appealed within 10 days.

16. Execution of Judgments Not Concerning Property

Judgments which do not concern property, such as those obligating a respondent to take particular actions, also give rise to the issuance of an execution order and the initiation of execution proceedings as described above. As in the case of other types of judgments, the court enforcer appoints a period for the voluntary execution of the order by the debtor.³⁵ If the respondent fails, without sufficient reason, to take the required actions within the period established, a fine may be imposed of up to 200 times the minimum monthly wage and a new period established for execution. If the actions are not performed within the subsequently established periods, the fine is doubled each time. Repeated failure to take the required actions will give rise to a submission by the court enforcer of a representation to the authorities empowered to impose administrative or criminal liability on the individuals who should have executed the actions.

17. Fees and Costs Associated with Execution

In any instance in which a debtor fails to execute the requirements of the execution order within the period established for voluntary execution, an execution fee is imposed upon the debtor. For judgments concerning money or property, the execution fee is 7% of the sum or of the value of the property, and for non-property judgments the execution fee

³⁵ There is a slight inconsistency in the language of Article 73 of the Law on Execution, concerning execution of non-property judgments, and the language of Article 9 of the same law concerning the initiation of execution proceedings by the court enforcer. Article 9 requires the court enforcer to name the period for voluntary execution in the decree on initiation of the proceedings. Article 73 states that this is to be done "after the initiation of execution proceedings," but "in accordance with Article 9."

is five times the minimum wage for a physical person and fifty times the minimum wage for an organization. 30% of the execution fee is paid into the federal budget, while the remaining 70% goes into the fund for the development of execution proceedings, from which court executors are paid success fees and from which the expenses of execution are covered during the process of execution.

If expenses are incurred for actions taken to enforce the judgment, any such expenses, in addition to the execution fee, are also payable by the debtor and are to be refunded into the fund for the development of execution proceedings at the conclusion of the execution process. Costs of execution have the first priority in payments from the debtor's assets, and will be refunded into the fund whether or not there are sufficient assets to cover the judgment in full. The following may be considered execution costs:

- \$ expense for the transport, storage and sale of the debtor's property;
- \$ payments due to interpreters, specialists, witnesses or other persons in connection with execution activities;
- \$ fees for the delivery of the sums due to the creditor through postal money transfers or other means involving a fee;
- \$ costs of other actions taken for the execution of the order in accordance with law.³⁶

The creditor has the right to make an advance on the execution costs to help ensure the availability of funds to cover the necessary activities. The advance is returned to the creditor at the end of the execution proceedings, except where the creditor has hindered the execution or has refused to accept property specifically subject to transfer by the terms of the execution order. In the latter cases, the creditor will receive only the amount of the advance not used in the execution process.

18. Rights of Appeal of Execution Actions; Liability for Failure to Comply; Time Limitations on Actions of the Court Enforcer

a) Failure to Comply With the Demands of the Court Enforcer

A fine of up to 100 times the minimum monthly wage may be imposed by the court enforcer on any person or official who fails to comply with the lawful demands of court enforcers, and also on those who provide inaccurate information on the income or property of a debtor, destroy an execution document or fail to send it properly, or fail to inform the court executor of a change in the place of work or address of a debtor.

³⁶ As noted above, searches for the debtor and debtor's property in commercial cases are to be carried out at the expense of the creditor. The creditor may seek reimbursement of such costs, but must do so separately.

b) Appeal of Execution Actions

Decrees of the court enforcer may be appealed. Decrees issued by the enforcer concerning execution documents issued by the arbitrazh courts may be appealed to the arbitrazh court within a ten day period of the action (refusal to act). In all other cases the actions (refusals to act) of a court enforcer may be appealed to a court of general jurisdiction within a 10 day period. The court enforcer is obligated to issue a written decree concerning all actions and decisions in the execution process which concern the interests of the parties or other persons. The decree must state:

- ☐ the date and place of issuance of the decree;
- ☐ the position and name of the court enforcer issuing it;
- ☐ the execution proceeding concerning which it is issued;
- ☐ the question considered;
- ☐ the basis for the decision taken, including reference to the laws or other legal acts by which the court enforcer was guided;
- ☐ the conclusion concerning the question considered; and
- ☐ the procedure and limitations period for appeal of the decree.

In addition to the right to appeal the actions of the court enforcer to a court, interested persons have the right to make complaints concerning those actions to the court enforcer's superior — which will generally be the senior court enforcer in charge of the subdivision in which the court enforcer works. The making of such a complaint does not constitute any bar to a court appeal, and may be pursued simultaneously. A third avenue of complaint is the procurator, who is responsible under the Law on Court Bailiffs for the supervision of the legality of the activities of the service. The procurator, in turn, will have the right to make protests to the court enforcer taking the action and/or to his superior in the bailiffs service, and also to file a suit or appeal in court to protect state or social interests or the interests of third parties.³⁷

c) Time Limits for Actions of the Court Enforcer

The legislation concerning the execution of judgments places time limitations on many of the actions required of the court enforcer during the execution process. It does not, however, provide for any penalty to the court enforcer for failure to meet the deadlines contained in the law, nor does the Law “On Court Bailiffs” provide for any

³⁷ A recent note on the powers of the Procuracy in the supervision of the court enforcers service, including recommendations on the issues with which procurators should be concerned, appeared in the Procuracy's journal *Zakonnost'* [Legality]. Attention was directed to the possible self-interest of the court enforcers with respect to fees and success payments, to the protection of the interests of minors and others who may be less able to enforce their own rights, and also to the issue of self-interest of parties in the non-execution of judgments (due to bribery or other motives) and the difficulty of determining why a creditor may not press for the execution of a judgment.

such penalties. No law provides specific alternatives to a creditor in the case of a failure by the court enforcer to take timely action, except for the right to appeal a failure to act as discussed above. Nor are there remedies which would apply if delay in execution actions or failure to take particular actions results in the disappearance of assets that would otherwise have been available to meet a judgment.

B. Execution of Decisions of Foreign Courts

1. Recognition of Decisions of Foreign Courts

In order to secure the execution in the Russian Federation of a judgment rendered by a foreign court, the decision and judgment of the foreign court must be formally recognized by a Russian court and an execution order issued.³⁸ The only exception to this rule concerns decisions issued by the courts of the member countries of the Commonwealth of Independent states. An agreement “On the Procedure for Resolution of Disputes Connected with Conduct of Economic Activity” was signed by the CIS member states (except Georgia) in Kiev in 1992, which provides for the treatment of court decisions of member countries in the same manner as the decisions of national courts in the country in which execution is sought.

The procedure for the execution of the decisions of foreign courts is to be determined by the international agreements of the Russian Federation, if such agreement exists between the Russian Federation and the relevant country. There is no single applicable convention governing the execution of the decisions of foreign courts, and in each case the parties must determine whether a corresponding agreement exists between Russia and the foreign country concerning the reciprocal recognition of civil judgments, and the terms of any such agreement. Russia is signatory to a number of agreements concerning mutual legal assistance which include provisions concerning the mutual recognition and enforcement of court judgments. All of these agreements, however, provide for the formal recognition by a Russian court of the foreign decisions and its execution on the basis of an order of such court. ***At the time of this writing, no such agreement exists between the Russian Federation and the United States.***

As an example of the types of issues that may be raised concerning the recognition and execution of foreign judgments, the Convention on Legal Assistance which applies as between the countries of the Commonwealth of Independent States (signed in Minsk in 1993) lists the following bases for refusal to recognize or execute a court decision of another state:

- ✗ the decision has not entered into legal force or is not subject to execution in the state in which it was issued, with the exception of cases in which the decision is subject to immediate execution prior to its entry into legal force;

³⁸ Such recognition is, of course, required only for the execution of the foreign judgment on assets located in the Russian Federation. Enforcement of a foreign court judgment against property of the debtor located in the country where the judgment was issued will be governed by the laws of that jurisdiction.

- ✗ the respondent or his representative did not participate in the consideration of the case because of a failure to inform them properly about the proceedings;
- ✗ a decision of a court on the same matter between the same persons already exists in the country in which execution is sought or from a third country or proceedings in such a case were initiated in the country in which recognition has been sought prior to those which gave rise to the decision;
- ✗ the case is within the exclusive competence of the institutions in the country in which recognition is sought;
- ✗ there is no document supporting the agreement of the parties in the case, if the decision is based on contractually agreed venue;
- ✗ the limitations period for execution of the decision in the country in which recognition and execution are sought has expired.³⁹

In general, the relevant international agreements provide that a decision of a foreign court is to be recognized and enforced by the competent court in the state in which execution is sought. There has been some confusion regarding which courts in the Russian Federation should be considered the “competent court” with respect to the enforcement of foreign judgments. The term “competent court” might be considered to refer to the court that would be competent to consider the case if it were filed in the Russian Federation, or in the alternative could be any court defined as competent by Russian legislation. This question is not clearly resolved by the procedural legislation currently in effect.

There is no legislation in the Russian Federation which directly defines the courts that are to be considered “competent” for purposes of execution of foreign judgments. The Civil Procedure Code, which applies to the courts of general jurisdiction, does make reference in Article 437 to the enforcement of foreign court decisions by those courts, stating that the procedures are to be determined by international agreements. An Edict of the Presidium of the Supreme Soviet of the USSR “On the Recognition and Enforcement in the USSR of the Decisions of Foreign Courts and Arbitral Tribunals,” issued in 1988,⁴⁰ provides some limited guidance on procedures for enforcement of such decisions, but as the arbitrazh courts did not exist at the time of passage of that Edict, there was no need to distinguish between the two court systems regarding competence in such questions. The currently effective Arbitrazh Procedure Code contains no direct reference to the enforcement of foreign judgments, but does state in Article 215 that the arbitrazh courts are competent to undertake particular court actions or fulfill mandates by way of legal

³⁹ Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases.

⁴⁰ Edict of the Presidium of the Supreme Soviet of the USSR “On the Recognition and Enforcement in the USSR of the Decisions of Foreign Courts and Arbitral Tribunals,” *Vestnik Verkhovnogo Soveta SSSR* [Bulletin of the Supreme Soviet of the USSR], 1988, No. 29, Item 427. Legislation and other legal acts of the USSR apply in the Russian Federation unless they are superseded by Russian legislation or conflict with the constitution or laws of the RF.

assistance. If the recognition and enforcement of foreign court judgments is considered such legal assistance, then the arbitrazh courts on this basis have jurisdiction to consider requests for the recognition and enforcement of foreign court judgments. This interpretation is currently accepted by the arbitrazh courts, and on this basis those courts do accept petitions concerning the recognition and enforcement of foreign judgments when the judgment concerns a case that would be within the jurisdiction of the arbitrazh courts if considered in the Russian Federation. Unlike most parts of the competence of the arbitrazh courts, however, this type of case is not considered by the arbitrazh courts to be within the exclusive jurisdiction of the arbitrazh courts, but rather to be a matter of alternative jurisdiction, in which the party seeking the enforcement of the foreign judgment may choose which court to approach with the corresponding petition.

Confusion does continue, however, and some in the Russian legal community, including some courts, believe that foreign court decisions may only be recognized and enforced by the courts of general jurisdiction. This opinion is based on the concept of the arbitrazh courts as specialized courts, with a competence strictly limited to those cases directly placed within their jurisdiction by legislation, and a view of the language of Article 215 of the APC as insufficient to clearly assign such cases to the arbitrazh courts. In practice, there are instances in which courts of general jurisdiction accept petitions concerning the recognition of foreign judgments related to commercial disputes and others in which such courts reject such petitions, stating that the case is within the jurisdiction of the arbitrazh courts. This confusion, like the confusion regarding the enforcement of arbitral awards (discussed below), is a product of the change in the competence of the arbitrazh courts in 1995, when they received jurisdiction over cases in which foreign parties or interests are involved. The preparation of a new Arbitrazh Procedure Code which is currently underway includes amendments which will clarify the issue of competence and provide clarity with respect to procedures. The passage of the amended APC, and of a new CPC, should substantially reduce confusion in this area.

With respect to the arbitrazh courts, it should be noted that the APC requires arbitrazh courts to leave a suit without consideration when a competent court of a foreign state is considering a case concerning the same persons and the same subject and grounds, or has issued a decision on the case. The foreign court must have accepted the case for consideration prior to the filing of the case in the arbitrazh court in the Russian Federation. This rule is not applied, however, if the decision of the court is not (will not be) subject to recognition or execution on the territory of the Russian Federation, or is within the exclusive competence of the arbitrazh court in the Russian Federation. Such cases would include, for example, cases concerning rights in immovable property located in the Russian Federation.

2. Limitations Period for Execution of Foreign Court Judgments

According to the CPC, recognition and enforcement of the decision of a foreign court may be sought within three years of the entry of the decision into force. The Law on Execution recognizes execution orders based on a foreign court decision (Article 7), but does not state a specific period for the presentation of an execution order based on a

foreign court decision. Instead, Article 14 of that law states generally that an execution order issued by a court of general jurisdiction of the Russian Federation may be presented for execution within three years of the time of entry of the court act into force. The language of the relevant provision refers to execution orders issued “on the basis of” court acts of the courts of general jurisdiction. An execution order issued on the basis of a foreign court decision is not dealt with separately in the Article, leaving it somewhat uncertain whether the time period is to be calculated from the time of entry of the foreign court judgment into force or from the time of the entry of the court act issuing the execution order (the first act by the Russian court of general jurisdiction) into force. By analogy with a domestic court decision, however, the period would be calculated from the time of entry of the underlying foreign decision into force.

The interpretation of the provision is important, in that it may define the period for the presentation of the execution order by the time of entry into force of the underlying foreign court decision and not on the basis of the time of issuance of the execution order itself by the Russian court. In fact, the period in which an execution order may be sought from a Russian court and the period in which the execution order issued by a Russian court may be presented for execution appear to be identical under these provisions. In practice, time will be required to obtain the execution order from a court, and it is possible that a proceeding seeking recognition and enforcement filed late in the three year period could result in the issuance of an execution order after the same three year period permitted for its presentation. For this reason, the recognition of the foreign court judgment and issuance of the corresponding execution order should be sought well before the expiration of the three year period currently established for that step in the process.

There is no provision in the APC concerning the limitation period for a petition for an execution order based on a foreign court decision, nor concerning the period for presentation of such an order for execution. As stated above, the Law on Execution also fails to state a period for the presentation of execution orders based on a foreign court judgment. The general period applicable to execution orders based on acts of the arbitrazh courts is six months. Since an execution order issued by an arbitrazh court on the basis of a foreign court judgment is not based on an act of an arbitrazh court, this limitation would seem not to apply. As there is no other period stated, however, there remains a question concerning whether the six month period envisioned for court acts of the arbitrazh courts or the three year period for acts of the courts of general jurisdiction is to apply.

3. Security for Execution of the Judgment

The currently effective Civil Procedure Code does not contain specific provisions on security for a judgment. The Code does contain general provisions concerning security for a claim during the consideration of a case,⁴¹ but these are written with the apparent presumption that a court within the system will be considering the case in its substance,

⁴¹ See Chapter 13 of the CPC, Articles 133-140.

and require that the court “considering the case” also consider the request for security. It is not clear whether a court considering a petition for the recognition and enforcement of a foreign court decision would consider this petition to be a “suit” within the meaning of the term used in the provisions concerning security measures, or would consider its consideration of a petition for enforcement to be “considering the case” on the enforcement. If so, then the general provisions of those articles would apply to allow the court to impose measures of security at the time of issuance of the execution order. The APC treats measures of security for execution of the judgment separately from those for security of the suit during its consideration, and it is those provisions of the APC which would apply to security for the execution of a foreign court decision recognized by an arbitrazh court. The separate treatment in the APC of security for the suit during its initial consideration in substance and security for the execution of the judgment suggests that the general provisions of the CPC do not encompass measures imposed solely to secure the execution. If the CPC is interpreted in this way, there are no such measures available to a judgment creditor seeking security for execution from a court of general jurisdiction.

It should be noted, however, that the provisions generally allowing the court enforcer to impose distraint on property at the time of the initiation of the execution proceedings would seem to apply equally to the court enforcer’s execution of an order enforcing a foreign court decision. Thus, although security measures might not be directly available from a court of general jurisdiction, they could be imposed by the court enforcer when initiating the execution. This would require a petition from the judgment creditor requesting the immediate distraint of property to be submitted at the time of presentation of the execution order to the court enforcer for execution proceedings.

C. Recognition and Enforcement of Arbitral Awards

The earlier discussion of the jurisdiction of arbitration tribunals over commercial disputes noted that inconsistencies in the several legal acts which regulate this matter make a clear definition of the rules difficult.⁴² This is equally true with respect to the legal rules concerning the enforcement of the decisions of arbitration bodies. Differing rules apply to arbitral awards issued by foreign tribunals and by Russian domestic tribunals in “domestic” matters, and there is a particular lack of legislative clarity concerning arbitral awards issued by Russian arbitration tribunals in cases in which an “international element” — a foreign party or enterprise with foreign investments — is present.

⁴² The three legal provisions governing arbitration and the process by which confusion among them has arisen are discussed in Chapter 2, Section D.1. of this Handbook.

1. Arbitral Awards of Russian Arbitration Tribunals Concerning Domestic Disputes

a) Applicable Law

The activity of Russian arbitration tribunals in resolving domestic disputes (i.e., those not involving foreign parties or interests) is governed generally by the provisions of the Temporary Statute on Arbitration Tribunals for the Resolution of Economic Disputes (hereinafter the Temporary Statute)⁴³ and the Statute on the Arbitration Court which appears as Appendix No. 3 to the Civil Procedure Code. The Temporary Statute governs arbitration of disputes subject to the jurisdiction of the arbitrazh courts, while Appendix No. 3 applies to arbitration of disputes subject to the courts of general jurisdiction.

b) Enforcement Under the Temporary Statute

The provisions of the Temporary Statute concerning the execution of the awards of arbitration tribunals state that the decisions of arbitration tribunals are to be executed voluntarily within the period and through the procedures established in the decision. If no period for execution is stated in the decision, it is to be executed immediately. If the decision is not executed voluntarily within the period stated in the decision, the party in whose favor the decision was issued may submit a petition for an order on the execution of the decision to the permanent arbitration tribunal where the case materials are stored or to the arbitrazh court in the place where the arbitration tribunal is located. Such a petition must be made within a month of the expiration of the period for voluntary execution. If the petition is filed with the permanent arbitration tribunal, that tribunal must within five days of its receipt send it to the arbitrazh court which is competent to issue an execution order.

The petition must have as appendices documents confirming the failure to execute the decision and evidence of the payment of the filing fee for the arbitrazh court. If the petition is submitted after the expiration of the one month period or without proper documentation, it will be returned by the arbitrazh court without consideration. The arbitrazh court may, however, renew the period for the submission of the petition if the filing was missed for a sufficient reason.

A petition is to be considered by one judge within a one month period of its receipt by the arbitrazh court. The arbitrazh court may refuse the issuance of an execution order if the arbitration tribunal violated procedural rules, such as:

- ✗** the parties did not agree to consideration of the dispute by an arbitration tribunal;
- ✗** the composition of the tribunal or the procedure for consideration was not in accord with the agreement of the parties;

⁴³ Temporary Statute on Arbitration Tribunals for the Resolution of Economic Disputes, confirmed by Decree of the Supreme Soviet of the Russian Federation, Vedomosti S'ezda Narodnykh Deputatov i Verkhovnogo Soveta RF [News of the Congress of People's Deputies and the Supreme Soviet of the Russian Federation], 1992, No. 30, Item 1790.

- ✗ the party against which the decision was issued was not properly informed of the day of consideration of the case in the arbitration tribunal or for another reason was not able to present its explanations; or
- ✗ the dispute arose in the sphere of administrative relations with a state body or was otherwise not legally subject to consideration in an arbitration tribunal.

In addition to the procedural grounds for refusal of execution, the Temporary Statute allows the arbitrazh court to review the decision of the arbitration tribunal in its substance. According to its Article 26, if the arbitrazh court finds during its consideration of the petition that the decision of the arbitration tribunal is not in accord with the substantive law or was taken without proper consideration of the materials of the case, the arbitrazh court must return the case to the arbitration tribunal which issued the decision for a new consideration. These provisions effectively permit the substantive review of the case by the arbitrazh court. If it is not possible for the same arbitration tribunal to consider the case, the claim may be submitted to an arbitrazh court in accordance with the general rules concerning jurisdiction and venue.

The arbitrazh court issues a determination on its consideration of the petition, either granting or refusing an execution order. The determination may be appealed through the general procedures for appeal established by the APC, including those applying to cassational appeal and supervisory review. A sample petition for the enforcement of an arbitration award issued in a “domestic” commercial dispute, and the arbitrazh court’s determination on that petition, appear as Appendix R to the Handbook.

c) Enforcement Under Appendix No. 3 to the CPC

Appendix No. 3 to the CPC states that a decision of an arbitration tribunal which is not executed voluntarily may be enforced through the issuance of an execution order by a court. In issuing the execution order, the court is to verify that the decision of the arbitration tribunal does not violate the law and that the rules contained in Appendix No. 3 concerning procedures in the arbitration tribunal were not violated in the issuance of the decision. A refusal by the court to issue an execution order may be appealed within a 10 day period after its issuance. After a court’s refusal to order the execution of an arbitral award has entered into legal force, the dispute may be submitted to a court for resolution.

2. International Commercial Arbitration Outside Russia

With respect to awards issued by arbitration tribunals outside the Russian Federation, **recognition and enforcement are governed by the terms of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards**,⁴⁴ to which Russia is a party.⁴⁵ The grounds envisioned in the New York Convention for the refusal to recognize an award or to enforce it are:

⁴⁴ Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 21 UST 2517, TIAS 6997, 330 UNTS.

⁴⁵ Russia became a party to the Convention upon the dissolution of the Soviet Union in 1991.

- ✗ one of the parties to the arbitration agreement did not have legal capacity or the agreement itself was void by the applicable law, or if the applicable law is not stated by the law of the place of the arbitration;
- ✗ the party challenging the award was not properly notified of the appointment of an arbitrator or of the consideration by the tribunal or for another reason was not able to present its case;
- ✗ the award was issued concerning a dispute not subject to the arbitration agreement (but if this affects only a part of the award and the terms are separable, then only the part outside the agreement will not be recognized);
- ✗ the composition of the arbitration tribunal or the arbitration procedure was not in accord with the agreement of the parties, or was not in accordance with the law of the place of the arbitration;
- ✗ the award has not yet become binding on the parties or has been reversed or suspended by a competent court.

In addition, a court may refuse to enforce an arbitral award if the matter in dispute is not subject to arbitration under the law of the country in which enforcement is sought, or its enforcement would violate the public policy of that country.⁴⁶ The New York Convention is implemented by the 1993 Law “On International Commercial Arbitration” and Articles 35 and 36 of that law define the conditions for enforcement of foreign arbitral awards, repeating the provisions of the Convention listed here.

3. International Commercial Arbitration Awards Issued in the Russian Federation

a) Applicable Law

It is this category of arbitration proceedings and arbitral awards that gives rise to confusion concerning the applicable law and the procedures for securing enforcement of an arbitral award. The confusion is caused by the fact that two different pieces of legislation sometimes appear to apply to the same dispute. The Temporary Statute, by its terms, applies to arbitration of disputes which would otherwise be subject to the jurisdiction of the arbitrazh courts. The jurisdiction of the arbitrazh courts includes disputes involving foreign parties which meet the other criteria for arbitrazh court jurisdiction. Thus, the arbitration of international commercial disputes which would otherwise be subject to the jurisdiction of the arbitrazh courts would seem to be governed by the Temporary Statute. The clear exception to this is disputes which are arbitrated at the long-established International Commercial Arbitration Court (ICAC) or the Maritime Arbitration Commission (MAC), which are specifically exempted from the effect of the Temporary Statute.

⁴⁶ Grounds for reversal of an arbitral award or the refusal of execution appear in Article V of the New York Convention.

At the same time, there is a Law of the Russian Federation “On International Commercial Arbitration,”⁴⁷ “which applies generally to arbitration of international commercial disputes in the Russian Federation, without distinguishing among them on the basis of the court in which they would be heard if they were not arbitrated. The rules contained in the 1993 Law and in the Temporary Statute differ significantly, however, and most international commercial disputes which are subject to arbitration would fall into the jurisdiction of the arbitrazh courts if they were not arbitrated. The determination concerning which of these legal acts applies will define which court has the authority to enforce an award and what the powers of the court and procedures for enforcement will be.”⁴⁸

One of the means to resolve this apparent overlap in jurisdiction is a strict reading of the first article of the Temporary Statute, which provides that the Temporary Statute will not apply to disputes where a party is located abroad or where a party is an organization with foreign investment unless the parties to the dispute agree otherwise. If strictly applied, this article would eliminate the application of the Temporary Statute to any international commercial dispute except those in which the parties had specifically agreed upon its use.⁴⁹ This interpretation is not, however, universally accepted and there may be disagreements among courts concerning jurisdiction over the enforcement of arbitral awards issued by Russian arbitration bodies in cases concerning international commercial matters and the rules governing the enforcement of those awards.

b) Standards for Enforcement Under the 1993 Law “On International Commercial Arbitration”

The 1993 Law was in large part intended to implement the New York Convention. Articles 35 and 36 of the Law state the grounds for refusal of recognition or enforcement of a foreign arbitral award that are listed above in Section C.2. of this chapter. Article 34 of the Law states the grounds on which reversal of an arbitral award concerning international commercial matters *issued in the Russian Federation* may be sought in court, specifically:

- ✕ one of the parties to the arbitration agreement did not have legal capacity or the agreement itself was void by the applicable law, or if the applicable law is not stated by the law of the Russian Federation;

⁴⁷ Law of the Russian Federation “On International Commercial Arbitration,” *Vedomosti S’ezda Narodnykh Deputatov Rossiskoi Federatsii i Verkhovnogo Soveta Rossiskoi Federatsii*, 1993, No. 32, Item 1240.

⁴⁸ The confusion over the scope of application of these provisions is a result of changes that have occurred since the time of their passage. When the two acts discussed were adopted, the arbitrazh courts had no jurisdiction over cases concerning international commercial matters, and the only arbitration tribunals hearing such matters were those specifically excluded from the scope of application of the Temporary Statute. In the intervening period, the arbitrazh courts have been given general jurisdiction over most international commercial disputes and many new arbitration tribunals have been formed and are hearing disputes concerning such matters.

⁴⁹ Even in instances of agreement, however, the application of the rules of the Temporary Statute concerning enforcement of arbitral awards by courts to cases concerning international commercial arbitration may still raise difficult issues, as the grounds provided by the statute for refusal of enforcement of an award are not entirely consistent with those envisioned in the New York Convention

- ✗ the party challenging the award was not properly notified of the appointment of an arbiter or of the consideration by the tribunal or for another reason was not able to present its explanations;
- ✗ the award was issued concerning a dispute not subject to the arbitration agreement; or
- ✗ the composition of the arbitration tribunal or the arbitration procedure was not in accord with the agreement of the parties, if they could have legally agreed on those issues under the 1993 Law, or was not in accordance with the law.

In addition, the award may also be reversed by a court on the grounds that the object of the dispute may not be the subject of arbitration according to the law of the Russian Federation or that the award violates the public policy of the Russian Federation.

These grounds are identical to those provided by the New York Convention as grounds for refusal to enforce a foreign award, with the exclusion of the ground that the award is not yet binding or has been suspended or reversed. Thus, the primary difference between the enforcement of arbitral awards concerning international commercial arbitration issued outside the Russian Federation and those issued inside the Russian Federation is that those issued inside the Russian Federation may be *reversed* by a Russian court under certain circumstances, while the same circumstances with respect to a foreign arbitral award may lead only to a *refusal to recognize and enforce* the award. This leaves open the possibility, in relation to arbitral awards issued inside the Russian Federation, for reconsideration by a Russian arbitration tribunal where the defect which led to the reversal is one that can be cured in a new arbitration proceeding (e.g. failure to properly notify a party or procedural problems).

c) Standards for Enforcement Under the Temporary Statute

Where enforcement of an arbitral award concerning an international commercial matter takes place under the Temporary Statute, the rules and procedures discussed above in Section C.1(a) of this chapter will apply.

4. Where and How to File

a) Requests for Enforcement Under Appendix No. 3

A request for enforcement of an arbitral award in a case that would otherwise have been subject to resolution in the courts of general jurisdiction must be sought from the first-level court (the regional or city court) in the area where the arbitration procedure took place. The records of arbitration proceedings in such cases are to be forwarded to this court for storage after the arbitration has been completed. A decision refusing to issue an execution order may be appealed within ten days of issuance. After a decision refusing an execution order has entered into force (which occurs either when no appeal was filed within the available period or after the appeal decision is issued), a party in the

case may file a petition for the resolution of the same dispute in the appropriate court of general jurisdiction.

b) Request for Enforcement Under the Temporary Statute

The Temporary Statute provides that execution orders are to be issued by the arbitrazh court of the first instance in which the arbitration tribunal issuing the award is located. A petition must be submitted within a month of the expiration of the period stated in the award for voluntary execution, or within a month of the day after the issuance of the award. The arbitrazh court has the authority to reestablish the period for filing if a good reason is shown for having missed the deadline. If the arbitral award in question was issued by a permanent arbitration tribunal, the request is made by submission of the petition to the tribunal, which must forward it within five days, together with the record of the proceedings, to the appropriate arbitrazh court. If the arbitral award was issued by an ad hoc tribunal, the petition is submitted directly to the arbitration court. The petition is to be considered by a single judge within a one month period of its receipt, and a determination issued on issuance or refusal of the execution order.

c) Request for Enforcement of Decisions Issued in International Commercial Arbitration Processes

The question concerning which court is appropriate for the filing of a petition for enforcement in a case involving international commercial arbitration is not resolved by the 1993 Law, which only states that the petition should be filed in the “competent” court. With respect to the decisions of arbitration tribunals located outside the Russian Federation, the 1988 Edict on enforcement of foreign judgments and arbitral awards, discussed in Section B of this Chapter with respect to the enforcement of foreign court decisions, states that the petition should be filed in the highest (supreme) court in the subject of the Federation (republic, oblast, krai) in which the execution is being sought. As discussed above, the 1988 Edict was passed before the creation of the arbitrazh courts and so does not distinguish between the arbitrazh courts and the courts of general jurisdiction. The same confusion discussed in Section B with respect to the “competent court” for the enforcement of foreign judgments exists also with respect to the competent court for the enforcement of foreign arbitral awards. If foreign arbitral awards are equated with foreign court decisions and their enforcement is considered to be within the definition of “legal assistance” under Article 215 of the APC, then the analysis currently accepted by the arbitrazh courts and discussed in Section B, under which the arbitrazh courts have “alternative jurisdiction,” together with the courts of general jurisdiction, over enforcement of foreign court judgments, applies equally to the enforcement of foreign arbitral awards.

A special question exists with respect to the enforcement of arbitral awards, however, that does not arise with respect to enforcement of court decisions. Court decisions are either issued by foreign courts or by domestic courts. Arbitral awards, however, may be issued in “international” cases by arbitration tribunals located within the Russian Federation. This raises the question of the definition of the “competent” court

with respect to enforcement of an award issued in international commercial arbitration proceeding that takes place in the Russian Federation.

Traditionally, the courts of general jurisdiction enforced the decisions of the ICAC and MAC during the many decades in which these were the only existing international arbitration tribunals within the USSR. This practice continues in the present, and the decisions of those bodies are usually submitted to a court of general jurisdiction for the issuance of an execution order. Article 339 of the Civil Procedure Code, applied by the courts of general jurisdiction, includes decisions of the ICAC and the MAC in its list of documents on the basis of which an execution order may be issued. The specific court to which a petition is submitted has changed a number of times over the years, including the local court of the first level located at the place of the arbitration tribunal, the second-instance court (the Moscow city court of general jurisdiction), and the first instance court at the place of location of the respondent. At the present time, petitions are being accepted by the Moscow city court of general jurisdiction. However, the practice of submission of such petitions to this court is not an exclusive one, and there have been instances in which a petition for the issuance of an execution order based on a decision of the ICAC has been submitted to the Moscow arbitrazh court (the first instance arbitrazh court) and an execution order has been issued by that court.

With respect to the decisions of other arbitration tribunals in the Russian Federation which hear both “domestic” and international matters, there is some confusion concerning jurisdiction to issue execution orders. A conclusion that the courts of general jurisdiction are the proper courts for such cases can be based upon the provisions of the CPC generally authorizing issuance of execution orders on the basis of arbitral decisions. A conclusion that the arbitrazh courts have jurisdiction over such cases may be based on one of several possible legal analysis. One analysis relies on the language of the Temporary Statute concerning its application to all cases within arbitrazh jurisdiction (including, since 1995, cases involving foreign parties). Another would interpret the 1993 Law’s reference to the “competent” court to mean the court otherwise competent to hear the underlying dispute if it were brought in a domestic court. In the alternative, the arbitrazh courts could be considered to be competent to issue enforcement orders in such cases on the basis of the same analysis presented in Section B of this Chapter concerning foreign court decisions, treating “international” awards issued by domestic arbitral tribunals as “foreign” for the purposes of the analysis. Practice in the submission and consideration of such cases is not completely consistent. The arbitrazh courts acknowledge jurisdiction over such cases, provided they would be within the jurisdiction of the courts if heard initially. Courts of general jurisdiction have in some instances transferred cases to the arbitrazh court or refused the case and advised the party seeking enforcement to do so. In other instances, however, the courts of general jurisdiction have accepted the relevant petitions and considered the case.

The lack of clarity in the legislation creates some serious questions about differing treatment of petitions for execution orders. If the arbitrazh courts apply the Temporary Statute in considering a petition for an execution order, they may conclude that they are to review the decision of the arbitral tribunal in substance, to determine whether the decision

is legal and was based on due consideration of all of the factual circumstances. The courts of general jurisdiction, however, if applying the 1993 Law, would conclude that they may not review the substance of the arbitral decision and may only reverse or refuse execution on the grounds stated in the Law. A different question of differential treatment may arise between international cases decided by a foreign arbitration tribunal and those decided by an arbitration tribunal within the Russian Federation, due to the differing time limitation on the execution of a resulting order. (See below.) These questions may be resolved by the new APC and CPC and/or by legislation on arbitration, but until this occurs it is important for parties to a dispute to be aware of the issues. There have been some cases in which foreign parties relied on needs to be resolved through legislative clarification or conclusive interpretation by the highest courts in the two court systems.

5. Limitations Periods for Enforcement

The 1993 Law does not specify any time limitation on the submission of a petition for the enforcement of an award from an international commercial arbitration tribunal. With respect to execution of an order enforcing the award once it is received, the limitation stated in the Civil Procedure Code and repeated in the 1988 Edict is three years.

The 1997 Law on Execution does not appear to contain a limitation period applicable to execution orders based on a decision of a foreign arbitration tribunal. In defining execution documents, that law (Article 7) lists as two separate categories execution orders issued (a) on the basis of decisions of foreign courts and arbitration tribunals, and (b) on the basis of decisions of the International Commercial Arbitration or other arbitration tribunals. Although the reference to “International Commercial Arbitration” uses the term “arbitrazh” for arbitration tribunal rather than “arbitrazhnyi sud” or “arbitrazh court” — the reference is singular and capitalized and appears to refer to the International Commercial Arbitration Court (ICAQ) discussed above. In defining the periods for presentation of execution orders, the same law (Article 14) provides a six month period for orders issued on the basis of decisions of the ICAC or of other arbitration tribunals, which appears to be applicable to orders enforcing awards issued by these tribunals, whether issued by the courts of general jurisdiction or by an arbitrazh court.

The 1997 Law on Execution, however, provides no period for the presentation of execution orders based on the decisions of foreign courts or arbitration tribunals. In the absence of such a period, the periods defined by the CPC and the 1988 Edict of three years would seem to apply to these orders. This differentiation in time periods, however, would seem to subject awards in international commercial arbitration to very different execution periods, depending upon whether they were issued within the Russian Federation or by a tribunal outside the Russian Federation. In the alternative, the general periods for presentation of orders based on acts of the arbitrazh courts (six months) and of the courts of general jurisdiction (three years) could be applied, but this would result in very different periods for the enforcement of foreign arbitral awards depending upon which court issued the execution order. Confusion about the applicable limitation has in some instances caused foreign parties to fail to present execution orders within the required periods and thereby to lose their opportunity to enforce an arbitral award. Until

this matter is more clearly resolved by legislation, parties to disputes should be extremely careful about limitations periods on execution orders and would be well advised to obtain and present such orders for execution as early as possible.

6. Security for the Execution of the Judgment

Provisional measures for security of the claim during arbitration are provided for by the rules of a number of the arbitration tribunals that are competent to issue awards in cases concerning foreign economic matters, and the ICAC, for example, reports an increasing number of requests for provisional security in recent years. Such measures will usually be ordered by an arbitration tribunal only if the respondent, against whom the security measures are sought, can be shown to be acting in a manner that is likely to damage its ability to meet an award (e.g. selling principle assets). The party seeking the security may be required to give a return security for damages caused by measures of restraint, should the seeking party lose the case before the arbitration tribunal. All measures of restraint which are ordered by the arbitration tribunal hearing the case (or by the official of the tribunal authorized to do so) are to be implemented voluntarily by the parties. If a party does not voluntarily implement the security measures, the party seeking the measures must seek their enforcement through the courts, using the same procedures discussed above for security of a suit and the enforcement of court decisions generally.

There is a lack of detailed legal regulation in this area, and the kinds of questions discussed above concerning the competent court for enforcement of an arbitral award exist also in relation to orders for interim security measures. The language of Article 9 of the 1993 Law on International Commercial Arbitration states that “recourse of the parties to a court prior to or during the consideration by the arbitration tribunal with a request that measures be taken to secure the suit and the issuance by the court of a determination on the taking of such measures shall be compatible with the arbitration agreement.” The language of this provision clearly suggests that parties may be able to make recourse to a court for security of the claim during the arbitration process. Neither the CPC, passed prior to the issuance of the 1993 Law, nor the APC, passed two years thereafter, however, contains language specifically relating to security for an arbitral award. The general provisions of both codes concerning security for a suit during its consideration state that the petition is to be considered by the same court considering the dispute itself, leaving it at a minimum uncertain where a petition for security during consideration by an arbitration tribunal should be heard. Nor does the draft of the new Law “On Arbitration Tribunals in the Russian Federation” available at the time of writing provide any clarity in this respect. It states only that an arbitration tribunal shall have the right to instruct parties to take measures securing the claim, and does not address in any provision the means for enforcement of such measures, if they are not implemented voluntarily.⁵⁰

⁵⁰ The provisions of the draft relating to enforcement of arbitral awards would not appear to apply at all to the enforcement of measures for security, as the provisions concern only the court enforcement of the “decision” of an arbitration tribunal. The article concerning interim security measures refers to the arbitration tribunal’s ability to “order” such measures. There are no provisions in the law concerning the mandatory enforcement of the “orders” of an arbitration tribunal, and without such the provisions would normally be interpreted not to apply to such orders.

D. Practical Issues Related to Enforcement⁵¹

The practical problems associated with establishing an effective enforcement and execution system in the Russian Federation are considerable and the effort required should not be underestimated. This issue is not simply one of the need to create the court enforcer's service and to establish the legal procedures which will be implemented in order to carry out execution activities — although these are certainly necessary and important elements. This issue is also one of the state of development of markets and of the institutions that support them, and of the cost of some of the tools which may be taken for granted in other systems. Some of the underlying institutions and infrastructure which make reasonably certain and efficient execution possible in other systems have not yet had time to develop in the Russian Federation, while others are costly and may not develop on a broad scale until there is sufficient demand and ability to pay. While this certainly does not mean that judgments cannot be executed until they do develop, it does mean that the task may be difficult and creative strategies may need to be employed.

Under planning there was a very limited need for the services now to be provided by the court enforcer. Most of the property and funds of enterprises were used and transferred according to the requirements of economic plans and much of the accounting between entities was conducted without cash transfers. When an inter-enterprise dispute was resolved, the property or funds could be transferred by direct order of the controlling ministry, or direct accounting adjustment between the two enterprises, not requiring any acts of will of the enterprise or its managers. Failure of individuals to carry out transfers or other actions in accordance with properly issued instructions was punishable by significant administrative or even criminal liability. The property ownership of individuals was quite limited by law, as was their capacity to have domestic or foreign bank accounts. Under these circumstances, the ability of an enterprise or an individual to refuse to comply with a judgment, or to hide assets, or to transfer funds or assets to use for personal gain, was extremely limited. The kinds of mechanisms used to trace assets, to freeze accounts, and to allow for the enforcement of obligations in an otherwise unrestricted atmosphere were simply not required, and so did not exist.

It should be noted that many of the mechanisms used by those charged with enforcing a judgment in complex market environments were not created solely, or even primarily, for this purpose. Registry systems for various kinds of property, systems that track use of credit and certain kinds of bank transfers, the credit and financial history records that make it difficult for a person or company owing a judgment to continue to receive financing or to operate in another location, and other institutions of modern market life were put into place over time for the purpose of facilitating business activities. For example, the certainty about the ownership of property provided by registry systems ensures that transactions are final and provides security to the parties, while credit and

⁵¹ The number and type of practical issues that must be addressed in enforcing a court judgment will, of course, vary with the type of judgment or dispute and the parties involved. A full discussion of all of the possible issues is well beyond the scope of this Handbook. This section addresses only a small number of structural problems that are likely to affect most enforcement proceedings.

financial tracking and reporting allows businesses to make informed decisions about potential customers and partners with whom they are unacquainted. As it happens, these mechanisms also have substantial roles to play in allowing enforcement authorities to track assets and ensure that judgments are paid. These types of services and infrastructure will, presumably, develop as Russia's economy develops and the need for them increases. In the interim, priority may need to be given to rules which allow the most serious forms of asset hiding and improper transfers to be discouraged and, in appropriate circumstances, to be reversed. The creation of more detailed systems of credit reporting and monitoring primarily for enforcement purposes, however, is unlikely to be successful, since it will be avoided by commercial actors rather than viewed as a useful source of information and assistance, and probably cannot be funded without commercial application.

Another way in which the level of development of markets and the health of the economy affect the execution process is in their impact on markets for productive assets that may be sold to meet a judgment. In conditions of economic downturn, or in areas in which there is little in the way of available investment capital, the auction of the equipment and other productive assets of a commercial entity against whom a judgment has been issued may bring results disappointing to the judgment creditor. In recent years, however, monetary assets — bank accounts and cash — have been quite easy to transfer and to hide, and it is the physical assets that are less likely to disappear. Land and buildings enjoy a brisk demand in many locations, and may be the most valuable physical asset against which execution may be made. There are, however, still significant complications concerning the transfer of land in ownership and the prevalence of complex use agreements in office and industrial buildings may make them less useful as an asset to satisfy a judgment in some cases.⁵² These are not issues that changes in the execution process per se can address, but rather problems that will be alleviated with time, growth and continuing development of legislation in other areas. They are, however, issues that those involved in commercial disputes should remain aware of, and should take into account both before disputes arise — in considering the advisability of structuring security measures into business transactions — and after they have arisen — in considering the possibility of a request for imposition of security for the claim during consideration or security for the execution.

At the time of this writing, there is another significant issue that must be addressed in discussing the execution of judgments in commercial cases — the issue of the competing creditors of the judgment debtor, its possible bankruptcy, and the effect of these on the process and outcome of execution. As discussed above, the court enforcer is obligated to inform the Federal Bankruptcy Agency about execution proceedings which involve the basic productive assets of an enterprise, and the Federal Bankruptcy Agency may take steps to ensure that other creditors of that enterprise are informed of the situation or may itself take steps to initiate bankruptcy proceedings. The initiation of a

⁵² It is possible to transfer rights in a long-term lease and to auction such rights as a part of the property of the debtor. Article 62 of the Law on Execution specifically provides for such auctions. The transfer of the leased premises, however, may require the approval of the lessor, which may complicate the transaction should the lessor be unwilling to give a blanket approval.

bankruptcy process requires the suspension of the execution proceedings, and if the debtor is liquidated in bankruptcy the judgment creditor will be included among the creditors making claims against the bankruptcy estate. Priority order for the payment of claims from the assets of a bankruptcy estate places debts to employees and to the state (including taxes and contributions to the Pension and other funds) above debts contracted in the normal course of business. The level of indebtedness of many enterprises to employees and to the state at the current time is extremely high, which reduces the likelihood of payment to ordinary creditors during a bankruptcy proceeding. While this is not a matter that is within the control of a party to a commercial dispute, its practical significance may weigh on decisions concerning such matters as settlement agreements or whether to object to a proposed installment scheme for execution. A similar issue may arise with respect to a judgment debtor against which the higher-priority claimants have already obtained execution orders, since the priority order for the payment of competing judgment creditors also places creditors in the normal course of business in a lower priority than debts to employees, to state Pension, Employment and Insurance Funds, and to the budgets of any level of the state.